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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THE 28TH DAY OF MAY 1998

BEFORE:

THE HON'BLE MR.JUSTICE H.RANGAVITTALACHAR

H.R.R.P.NO.1317/93

BETWEEN:

Sri.Sreenivasulu Naidu;,
Proprietor M/s.Srinivasa Furnishing House,
Hindu, Major,
r/o.V-3,I Cross,
H.C.Main Road,
Bangalore and doing business in
18/2, Market Road,
V.V.Puram,
Bangalore - 560 004. Petitioners

(By Sri.Sudharshan Reddy & Shankarlingappa - Adv.)

And :-

1. Smt.Padmavathamma,
Major, Hindu,
w/o.late Sri.Pullaiian Naidu;,
2. Sri.Sreenivasa Prasad,
Hindu, Major,
s/o.late Sri.Pullaiiah Naidu,
Both are residing at
No.306, Market Road,
V.V.Puram,
Bangalore - 560 004. ... Respondents

(By Sri.Jose Sabastian - - Adv.)

This HRRP is filed under Sec.50(1) of KRC Act, against the order dtd.27.9...1993 passed in HRC No.2683/90 on the file of the Chief Judge of Small Causes Judge, Bangalore allowing the petition filed under Sec.21(1)(h) of KRC Act.

This HRRP coming on for hearing this day, the Court made a following ORDER

O R D E R

Respondents to this petition filed an eviction petition in respect of a shop premises situated at V.V.Puram, Bangalore measuring 10 feet by 11 feet against the petitioners herein under Sec.21(1)(h) & (p) of the Karnataka Rent Control act (For short THE ACT) on the ground that the 2nd petitioner is unemployed and has no ¹required educational qualification for taking up any other employment, therefore the said premises is required for purposes of installing a grinding machine for eking out his livelihood. Therefore the premises is reasonable and bonafide required for their own use and occupation. Secondly the petitioner/tenant herein has acquired suitable alternative accomodation, therefore he is liable to be evicted under Sec.21(1(p) of the act; This petition was resisted by the petitioner by filing a detailed statement of objections denying the requirements as either reasonable or bonafide so

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also denying that he has acquired any alternative premises. On the basis of this pleading the parties went on trial and led evidence. The I respondent examined herself as P.W.1 and produced some documents. So also petitioner examined himself in support of his case and produced some documents. Learned Judge of the Small Causes in appreciation of the evidence led by the parties by a very detailed and considered order has allowed the eviction petition on both the grounds on which the eviction is sought. This order is challenged by the petitioners in this revision .

Sri.Sudarshan Reddy - learned counsel appearing for the petitioner firstly submitted that the premises is sought for the use and occupation of petitioner No.2 - Srinivasa Prasad but he has not been examined. Non-examination clearly establishes that the respondents are not sincere and this has been overlooked by the Court below. Secondly he contended that the Courts below have not taken note off the contradictions in the evidence of P.W.1 which if considered will belie the case of the respondents. He lastly submitted that at any rate the eviction order

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passed under Sec.21(1)(p) cannot be sustained inasmuch as according to him the acquisition of alternative premises if any made was prior to the petitioner being inducted as a tenant and under such a situation Sec.21(1)(p) is not applicable.

Except the last submission, none of the submissions made by the learned counsel have substance.

Insofar as the contention that the respdt.2 - Srinivasa Prasad has not been examined in support of his case is concerned, it has to be said that the mother - P.W.1 has stated that respdt.2 Srinivasa Prasad is not mentally normal as he has a very weak memory. In this case the mother of respdt.2 has examined herself as P.W.1 who has personal knowledge about the facts of the case, and it is not the case of the petitioner that the said Srinivasa Prasad is deliberately kept out to shield him from being subjected to cross examination, to hide some vital information, therefore it cannot be said that non-examination of respdt.2 would have caused any prejudice. Therefore the said contention is negatived.

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In sofaras the 2nd contention that there are contradictions which ~~is~~^{is} taken note would have belied the case in concerned, I have gone through the evidence of P.W.1. Learned counsel is unable to point out any ~~fatal~~^{wild} contradictions except ~~minor~~^{ones}. P.W.1 has stated that her husband died about seven and a half years earlir to her deposition. Her another son also died after his marriage, somuchso she is a widow without any male assistance except the 2nd respdt. She has 4 duaghters who are married. After the death of her another son, her widor daughter-in-law had filed a suit for partition and a compromise decree was effected therein, as a result of the suit, the properties were divided. The suit property has fallen to the share of the 2nd respondnet. After partition, the only source of livelihood for her son was a meagre income of about Rs.350/- per month. No contradiction is shown by the ~~advocate~~^{learned Counsel}, which belies this case. Therefore the 2nd submission also lacks substance and has to be rejected./

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In this case the suit property is a small shed, the 2nd respdt. according to P.W.1 has studied upto only primary 6th std. and he has a very weak memory. It is not shown that they have any other source of income for their livelihood other than the meagre rents, which by any standards is not sufficient to meet the requirements of the family. Under the circumstances, aspiring to start a very small business of installing wet grinders to earn a moderate livelihood cannot be held to be unreasonable or lacking bonafides. The said business does not call for any expertise or skill. P.W.1 states that the capital required for the business may be around Rs.30,000/- and she has a saving of Rs.20,000/- and can raise the balance by pledging the jewels. The learned Judge has also discussed her evidence in detail and the evidence of respondents and has come to the conclusion that the requirement is reasonable and bonafide. These findings of the learned Judge cannot be faulted with.

In sofaras the question of comparative hardship is concerned, the admitted facts are that the petitioner/tenant is a businessman dealing

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with hiring of furniture. He has been carrying on the business in the same area apart from having 3 godowns other than the schedule premises.. As rightly held by the learned Judge, Compared to the respondents who have a very meagre income, the tenant/petitioner is already an established businessman having 3 other godowns other than the one in the schedule premises with a large income, by ordering eviction, he will not suffer any hardship. This finding is based on the admissions of the petitioner which cannot be said to be perverse.

The learned Judge on the question of feasibility of partial eviction after assessing the relevant needs and the dimension of the schedule premises has come to the conclusion that partial eviction is not feasible. There is no reasonable ground to interfere with the findings of the learned Judge, ^{also}

In sofaras the last submission of the learned counsel ~~appearing for the~~ petitioner that the tenant is liable under Sec.21(1)(p) of the act to be evicted only if he acquires any suitable

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alternative premises subsequent to he being inducted as a tenant, the same has to be accepted. Admittedly in this case, acquisitions made were prior to petitioner becoming a tenant of the schedule premises, therefore 21(1)(p) in my view cannot be attracted.

For the reasons stated above the revision petition is partly allowed inasmuch as the eviction order passed by the learned Judge of the Small Causes under Sec.21(1)(h) of the act is confirmed while that portion of the order ordering eviction under Sec.21(1)(p) is set-aside.

Having regard to the facts and circumstances of the case, 6 months time is granted to the tenant to quit and deliver vacant possession of the premises to the landlady.

Sd/-
JUDGE

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